

The Honorable Marsha Blackburn (TN-07)
Keynote Remarks for the Free State Foundation's Policy
Conference: "The Federal Unbundling Commission"
October 30, 2007

Thank you very much for the kind remarks Commissioner Tate, and I thank the Free State Foundation and the Institute for Policy Innovation for inviting me to participate in this very important conference.

Today's topic: "The Federal Unbundling Commission," is more than just an appropriate title for a policy conference focused on telecommunications.

It highlights what I believe are two competing visions for the future of the communications industry, consumer access to technology, and free market principles in a town with an unsettling recent urge to regulate.

The first, market-driven vision is already unfolding in the private sector. Technology-driven companies are rolling out products and services that bring Americans closer together, and delivering those products to a market hungry for choice, quality, and advanced features.

Traditionally, a consumer can choose a cable provider for video, a local wire-line provider for voice, or an ISP for broadband Internet service. In many communities that same consumer can also purchase the "triple play" package from the old telephone provider, or VOIP service from the cable guys down the street.

Either way, consumers have a choice. Why is this possible? The answer is simple; light touch regulation policies adopted by Congress and carried out by the FCC have stimulated innovation, allowed for advanced technology, and delivered unparalleled opportunities for consumers and businesses alike.

The 1996 Amendments to the Communication Act mention the word "Internet" precisely 11 times, -- let me repeat that number...11 times.

Eleven year ago, policy makers simply could not comprehend the future power of the Internet in a world that dialed up and jumped online at 14 kilo-bites per second. Yet that same Congress still delivered a landmark regulatory regime that now enables a world-famous rock band (Radiohead) to introduce and distribute a new album entirely online...

The Internet has gone through many life-cycles, and the '96 Act provides the foundation for what Americans and the world enjoy today.

{Transition to Vision Two}. However, there is a growing trend that does not view the telecommunications world through the same lens. Indeed, for some critics, the current regulatory regime in place at the FCC is fraught with danger, restriction, and handcuffs that prevent innovators from doing what they do best.

This perspective is gaining momentum in Washington through the left-of-center blog community, and right here on Capitol Hill. These voices are calling on Congress and the FCC to double-back on the progress of the past decade and to force the communications industry to "un-bundle" what is and has yet to be brought to market.

"Un-bundlers" even speak a similar language. "Open Access." "A-La-Carte." "Consolidation in Media Ownership." "Net Neutrality." These policies carry different names, and are cleverly crafted terms that unfortunately mislead the general public.

But more importantly, these terms are all spawn of a similar mindset: Re-regulation.

Unfortunately, the folks who currently wield gavels in Congress and at the FCC are listening to these ideas and considering a move from light touch to increased regulation.

Take the upcoming 700 MHz spectrum auction, for example. As many of you know, Congress authorized this auction as a part of the Deficit Reduction Act of 2005. And if executed correctly, the upcoming auction may implement two important goals:

- 1) To help first responders establish fully interoperable telecommunication system for disaster response; and

2) Lease "beach-front" property for wireless providers that will move into analog spectrum abandoned by broadcasters...spectrum that is likely to accommodate new and innovative services that consumers can only now imagine.

However, Congress authorized the auction for a more precise purpose: raising money for deficit reduction. CBO estimates that, under conservative circumstances, the spectrum auction may raise between ten and twelve billion dollars. Yet experts in the field believe that total can reach between fifteen and twenty billion.

I am gravely concerned that as currently written, the rules to govern the 22 MHZ spectrum block will not achieve these important goals on behalf of the American taxpayer.

The spectrum auction process enacted by Congress and implemented by the Commission has a proven track record of success. Over the past decade-plus, wireless licenses were granted to entities, and those businesses provided billions of dollars in proceeds for the U.S. Treasury. The market -- not the Federal government -- led the way.

These auctions were successful due to an FCC governed process that did not saddle licensees with burdensome regulations.

And I'm not talking about ancient history: After all, the AWS auction conducted last year for Phase 1 of the 4G auction generated billions.

What has changed since that time, except the expansion of the wireless market, increased competition in the regional and local markets, and lower prices/increase service for consumers?

With the new rules adopted by the FCC to govern the 22MHz block of the 700 MHz auction, the FCC is essentially asking leaders in the wireless industry to play by a different set of rules. These new rules are bad for business, bad for the economy and, most importantly, bad for the consumer.

The Commission has made its decision. However, the 37 bipartisan Members of Congress who joined me in asking the FCC to take a different approach will be watching the process closely. Should the auction fail to yield the Chairman's targeted price in the 22 MHz block, we will be back on the FCC's door-step to demand a policy change.

We also understand that the Commission is closely examining an "a la carte" programming policy to govern the video market.

Now, "A la carte" may sound appealing. After all, who wouldn't choose to pay for only what they want if given a choice?

What proponents fail to mention, however, is the video market simply does not resemble aisle three of the local Safeway or a trip down the buffet line at Bonanza.

In fact, a recent Government Accountability Office report notes that "a la carte" requirements could result in higher rates per channel and increased rates for some consumers.

Under this policy, ESPN and other popular channels would come with a premium price tag. A Bear Stearns analysis found "a la carte" pricing would even impact popular channels like Disney, ESPN, Fox News and TBS.

In my home state of Tennessee we have a vibrant production community that includes CMT, TNN and HGTV. These companies provide quality programming that is independently produced; and they need access to larger networks in order to reach a wide market.

An "A-la Carte" regime might deny this important market access, which in turn would yield less choice and higher prices for consumers. That simply does not make sense.

Smaller channels including the Food Network, Lifetime, Discovery or Oxygen, would not exist if "a la carte" programming was in place before their launch.

Without bundled packages that offer popular networks such as ESPN, CNN, or even MTV, channels with less market penetration might have a hard time generating enough revenue to survive, or even begin to offer network programming.

According to the Consumer Electronics Association, 87% of American homes have access to cable or satellite service. Reversing the current regulatory model would put the video market at risk, and ultimately give consumers less choice in viewing diverse programming -- not more. That is not the policy road the FCC should be traveling upon.

However, the Commission should expeditiously move to adopt a regulatory framework that will allow cutting edge wireless devices to operate in the "White Space" of soon to be dormant analog spectrum.

Though device testing is currently underway to ensure consumers and the live performing arts industry are not put at risk -- and this is important -- it is equally important for the FCC to move forward with a plan that will allow technologists to take advantage of the fallow spectrum.

My constituents in Middle and West Tennessee crave alternative access to broadband Internet service on the go, and these next-generation devices under development will provide them exactly what they need.

President Ronald Reagan once used a quote that is very apropos for this current "unbundling policy". He said the nine most feared words in the English language are: "I'm from the government and I'm here to help."

If the fast paced, technology-driven industry is to succeed in the 21st century, it needs room to grow.

Some things will work, while others will not. It should be the free market, not government intrusion that should decide what works and what doesn't.

As this process unfolds, it will be critical for the Congress and the Commission to hold the line on light touch regulation, and resist the urge to "un-bundle" what is already working in the free-market.

Thank you.